

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

HTP, INC., a Washington Corporation

Plaintiff,

v.

FIRST MERIT GROUP HOLDINGS INC., a
Canadian provincial corporation, et al.

Defendants.

No. 2:21-cv-00732-BJR

**ORDER GRANTING JOINT MOTION TO
COMPEL**

I. INTRODUCTION

This matter comes before the Court on a joint motion to compel brought by all parties to this lawsuit, Plaintiff HTP, Inc., and Defendants (the “Parties”). The motion seeks an order compelling a third party, Western Washington Law Group (“WWLG”), to comply with a subpoena issued by the Parties. The subpoena directs WWLG to produce files belonging to WWLG’s former clients, Plaintiff HTP and Defendant Evan Johnson, who are now on opposite sides in the instant dispute. Having reviewed the briefs and exhibits filed in support of the motion, and the objection thereto filed by WWLG, the Court finds and rules as follows.

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II. BACKGROUND

WWLG attorney Dennis McGlothlin filed this lawsuit on behalf of HTP. On May 26, 2023, McGlothlin withdrew his representation in response to Defendants' motion to disqualify, which was based on McGlothlin's prior representation of Defendant Johnson. Through its new counsel, HTP subsequently requested its client files from WWLG, including documents held by WWLG related to this lawsuit. Talevich Decl., ¶ 4. McGlothlin responded by asking HTP to formalize its request in a subpoena. *Id.*, Ex. A. McGlothlin also set out additional conditions (or "protocol") on which production of the files depended, including that his former clients bear the cost of such production. HTP and Defendants issued a subpoena to WWLG on March 20, 2024, while stating it was "not in agreement with the protocol [McGlothlin] requested and does not believe that a subpoena should be necessary to obtain relevant documents from its former counsel." *Id.*, Ex. B.

Rather than produce the files, McGlothlin responded with an objection, stating that he required a written waiver of attorney-client privilege from both HTP and Johnson, and repeating his demand for compensation for expenses related to the production. *Id.*, Ex. C. In response, HTP provided signed requests for the documents and stated "[n]o costs of reproduction should be necessary." *Id.*, Ex. D. McGlothlin did not produce the requested documents by the return date provided by the subpoena, claiming he was in the process of getting a quote for the cost of reproducing the files. Over the following weeks, McGlothlin did not produce the files, despite

1 representations that he would do so, and instead made excuses for that failure. To date, the files
2 have not been produced.
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4 III. DISCUSSION

5 WWLG does not deny that it has documents that are responsive to the Parties'
6 subpoena, or claim that it is unable to access those documents. Instead, in response to the
7 Parties' motion, WWLG has objected to production of McGlothlin's former clients' files
8 based on several frivolous grounds. For example, it argues that the subpoena was not properly
9 served, and that Federal Rule 45, which governs the subpoena of documents to third parties,
10 requires that the cost of producing such documents be borne by the requesting party.
11

12 However, production of the client files at issue here is not governed by Federal Rule
13 45 or subject to that rule's protections.¹ Under Washington Rules of Professional Conduct
14 1.16(d), "[u]pon termination of representation, a lawyer shall ... surrender[] papers and
15 property to which the client is entitled." As the WSBA's Advisory Opinion 181 explains, in
16 the absence of "an express agreement to the contrary," an attorney has an obligation to turn
17 over files belonging to a client at the client's request, with any copies to be retained by the
18 attorney made *at the attorney's expense*:
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20 II. Responding to a former client's request for files

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23 ¹Furthermore, the Parties have submitted evidence that they delivered the subpoena to WWLG by
24 email, in precisely the manner McGlothlin requested. *See* Talevich Decl., Ex. A. WWLG cannot now
be heard to complain of service in a manner it prescribed.

1 A. Issue: When a former client requests the file and no lien is asserted, what
2 copying costs can a lawyer charge and what papers and files must be delivered?

3 B. Conclusion: At the conclusion of a representation, unless there is an express
4 agreement to the contrary, the file generated in the course of representation, with
5 limited exceptions, must be turned over to the client at the client's request, and
6 if the lawyer wishes to retain copies for the lawyer's use, the copies must be
made at the lawyer's expense.

7 WSBA Rules of Prof'l Conduct Comm., Advisory Opinion 181 (rev. 2009). WWLG has not
8 claimed there was "an express agreement to the contrary," and does not otherwise attempt to
9 explain why the Washington Rules of Professional Conduct do not govern the circumstances
10 here. While it claims it will take "dozens of hours" to extract the "targeted" material the Parties
11 have requested, it has failed to demonstrate that this may be attributed to any unreasonableness
12 in the request, or to anything other than an inadequate filing and/or document retention system
13 on its part. Indeed, by imposing excessive conditions and engaging in unreasonable delay in the
14 return of client files, McGlothlin and WWLG are potentially exposing themselves to discipline
15 for violations of the rules of professional ethics. *See In re Disciplinary Proceeding Against*
16 *Eugster*, 166 Wn. 2d 293, 327 (2009), as corrected (Sept. 23, 2009) (affirming suspension of
17 attorney for, among other things, "refus[ing] to turn over his client's files and important papers
18 as requested.").

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20 Another of WWLG's objections to the Parties' request for the former clients' files is
21 that the method of delivery described in the subpoena differs from the method agreed upon in
22 subsequent correspondence. The Parties fail to address this "objection" in their reply brief, but
23 it is a frivolous one in any event. WWLG shall produce the documents in whatever reasonable
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1 manner its former clients request and in the absence of indication to the contrary, should
2 follow its former clients' most recent directions.
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4 IV. CONCLUSION

5 For the foregoing reasons, the Parties' Joint Motion to Compel is GRANTED. The
6 discovery deadline in this matter is September 4, 2024, and has already been continued at
7 least once. The Parties are on notice that absent truly extraordinary circumstances, this matter
8 will not be continued again. To that end, Western Washington Law Group is ORDERED to
9 produce all responsive documents requested in the March 13, 2024 Subpoena for Documents
10 (Exhibit B to the Declaration of Peter A. Talevich) within five (5) judicial days of this Order,
11 a deadline that is reasonable given the amount of time this request has been pending.²
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13 Dated: August 6, 2024.

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15
16 Barbara Jacobs Rothstein
17 U.S. District Court Judge
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23 ² This Order does not relieve WWLG and McGlothlin of their obligation to maintain privileges held
24 by third parties not involved in this lawsuit.

Presented by:

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Form Agreed to, Notice of Presentment

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